

SENATE MOTION

MR. PRESIDENT:

I move that Engrossed House Bill 1116 be amended to read as follows:

- 1 Page 1, between the enacting clause and line 1, begin a new
- 2 paragraph and insert:
- 3 "SECTION 1. IC 8-1-2-6.1 IS AMENDED TO READ AS
- 4 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 6.1. (a) As used in this
- 5 section, "clean coal technology" means a technology (including
- 6 precombustion treatment of coal):
- 7 (1) that is used at a new or existing electric generating facility and
- 8 directly or indirectly reduces airborne emissions of sulfur or
- 9 nitrogen based pollutants associated with the combustion or use
- 10 of coal; and
- 11 (2) that either:
- 12 (A) is not in general commercial use at the same or greater
- 13 scale in new or existing facilities in the United States as of
- 14 January 1, 1989; or
- 15 (B) has been selected by the United States Department of
- 16 Energy for funding under its Innovative Clean Coal
- 17 Technology program and is finally approved for such funding
- 18 on or after January 1, 1989.
- 19 (b) As used in this section, "Indiana coal" means coal from a mine
- 20 whose coal deposits are located in the ground wholly or partially in
- 21 Indiana regardless of the location of the mine's tipple.
- 22 (c) Except as provided in subsection (d), the commission shall allow
- 23 a utility to recover as operating expenses those expenses associated
- 24 with:
- 25 (1) research and development designed to increase use of Indiana
- 26 coal; and
- 27 (2) preconstruction costs (including design and engineering costs)
- 28 associated with employing clean coal technology at a new or
- 29 existing coal burning electric generating facility if the
- 30 commission finds that the facility:
- 31 (A) utilizes and will continue to utilize (as its primary fuel

1 source) Indiana coal; or
 2 (B) is justified, because of economic considerations or
 3 governmental requirements, in utilizing non-Indiana coal;
 4 after the technology is in place.

5 (d) The commission may only allow a utility to recover
 6 preconstruction costs as operating expenses on a particular project if
 7 the commission awarded a certificate under IC 8-1-8.7 for that project.

8 (e) The commission shall establish guidelines for determining
 9 recoverable expenses.

10 **(f) The commission has jurisdiction over transactions involving**
 11 **the purchase of clean coal technology from third parties, including**
 12 **the purchase of precombustion coal treated by gasification. The**
 13 **commission's jurisdiction includes the authority to review the**
 14 **terms of a transaction and determine whether the transaction is in**
 15 **the public interest.**

16 SECTION 2. IC 8-1-2-83 IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2002]: Sec. 83. (a) ~~Now~~ **This section does not**
 18 **apply to the following:**

- 19 (1) A corporation organized or operating under IC 8-1-13.
- 20 (2) A corporation that:
 - 21 (A) is organized under IC 23-17; and
 - 22 (B) has members that are local district corporations (as
 - 23 defined in IC 8-1-13-23).

24 (b) As used in this section, "control" means the power to direct
 25 the management and policies of a public utility, utility company, or
 26 holding company through:

- 27 (1) ownership of voting securities or stock;
- 28 (2) the terms of a contract; or
- 29 (3) other means.

30 The term does not include power to direct management and
 31 policies derived from holding an official position or corporate
 32 office with the public utility, utility company, or holding company.
 33 A person that owns, controls, or has the power to vote or the power
 34 to vote proxies that constitute at least twenty percent (20%) of the
 35 total vote power of a public utility, utility company, or holding
 36 company is presumed to have control of the public utility, utility
 37 company, or holding company.

38 (c) As used in this section, "holding company" means a
 39 company that has control over at least one (1) of the following:

- 40 (1) A public utility (as defined in section 1 of this chapter).
- 41 (2) A utility company.

42 (d) As used in this section, "person" means:

- 43 (1) an individual;
- 44 (2) a firm;
- 45 (3) a corporation;
- 46 (4) a company;
- 47 (5) a partnership;
- 48 (6) a limited liability company;

(7) an association;

(8) a trustee;

(9) a lessee; or

(10) a receiver.

(e) As used in this section, "reorganization" means a transaction that results in:

(1) a change in the ownership of a majority of the voting capital stock of a public utility;

(2) a change in the ownership or control of an entity that owns or controls a majority of the voting capital stock of a public utility;

(3) the merger of two (2) or more public utilities; or

(4) the acquisition by a public utility of substantially all the assets of another public utility.

(f) As used in this section, "utility company" means every corporation, company, partnership, limited liability company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that may own, operate, manage, or control any plant or equipment for the:

(1) conveyance of telegraph or telephone messages;

(2) production, transmission, delivery, or furnishing of heat, light, water, or power; or

(3) collection, treatment, purification, and disposal in a sanitary manner of liquid and solid waste, sewage, night soil, and industrial waste.

The term does not include a municipality that acquires, owns, or operates any of the foregoing facilities.

(g) A public utility, as defined in section 1 of this chapter, ~~shall~~ **may not do any of the following without approval of the commission after a hearing:**

(1) Sell, assign, transfer, lease, or encumber its franchise, works, or system to any other person, partnership, limited liability company, or corporation. ~~or~~

(2) Contract for the operation of any part of its works or system by any other person, partnership, limited liability company, or corporation. ~~without the approval of the commission after hearing. And no such~~

(3) Contract for or effect a reorganization of the public utility.

(4) Acquire control of a public utility, utility company, or holding company.

(h) A person may not acquire control of a public utility or a holding company of a public utility without approval of the commission after a hearing.

(i) A holding company that controls one (1) or more public utilities may not acquire control of a utility company without approval of the commission after a hearing.

(j) A public utility, except temporarily or in case of emergency and for a period of not exceeding thirty (30) days, ~~shall~~ **may not** make any

special contract at rates other than those prescribed in its schedule of rates theretofore filed with the commission, and in force, with any other utility for rendering any service to or procuring any service from such other utility, without the approval of the commission. It shall be lawful, however, for any utility to make a contract for service to or from another utility at rates previously filed with and approved by the commission and in force.

~~(b)~~ **(k)** The approval of the commission of the sale, assignment, transfer, lease, or encumbrance of a franchise or any part thereof under this section shall not revive or validate any lapsed or invalid franchise, or enlarge or add to the powers and privileges contained in the grant of any franchise or waive any forfeiture. No such public utility shall directly or indirectly purchase, acquire, or become the owner of any of the property, stock, or bonds of any other public utility authorized to engage or engaged in the same or a similar business, or operating or purporting to operate under a franchise from the same or any other municipality or under an indeterminate permit unless authorized so to do by the commission.

(l) The commission shall issue an order not later than one hundred thirty-five (135) days after a petition seeking approval is filed under this section. If the commission fails to issue an order within one hundred thirty-five (135) days after the petition is filed, the petition is considered approved.

~~(c)~~ **(m)** Nothing contained in this section shall prevent the holding of stock lawfully acquired before May 1, 1913, or prohibit, upon the surrender or exchange of said stock pursuant to a reorganization plan, the purchase, acquisition, taking, or holding by the owner of a proportionate amount of the stock of any new corporation organized to take over at foreclosure or other sale, the property of the corporation whose stock has been thus surrendered or exchanged.

~~(d)~~ **(n)** Every contract by any public utility for the purchase, acquisition, assignment, or transfer to it of any of the stock of any other public utility by or through any person, partnership, limited liability company, or corporation without the approval of the commission shall be void and of no effect, and no such transfer or assignment of such stock upon the books of the corporation pursuant to any such contract shall be effective for any purpose.

SECTION 3. IC 8-1-2-115.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 115.5. (a) As used in this section, "account" refers to the commission public utility fund account established under IC 8-1-6.**

(b) As used in this section, "order" means:

- (1) a decision;**
- (2) a decree;**
- (3) a demand;**
- (4) a determination;**

- 1 (5) a direction;
- 2 (6) an order;
- 3 (7) a requirement; or
- 4 (8) a rule;
- 5 of the commission.
- 6 (c) As used in this section, "utility" means:
 - 7 (1) a public utility over which the commission has
 - 8 jurisdiction; or
 - 9 (2) the department of public utilities created under
 - 10 IC 8-1-11.1.
- 11 (d) The commission may issue an order under subsection (e)
- 12 only if it finds, after notice and hearing, that a utility has:
 - 13 (1) violated a provision of this title;
 - 14 (2) failed to comply with an order; or
 - 15 (3) failed to comply with an administrative rule adopted by
 - 16 the commission under this title.
- 17 (e) After making a finding under subsection (d), the commission
- 18 may issue an order that does one (1) or more of the following:
 - 19 (1) Imposes on a utility, other than a telephone company (as
 - 20 defined in IC 8-1-2-88) that provides local exchange telephone
 - 21 service, a civil penalty of:
 - 22 (A) five thousand dollars (\$5,000) for an initial violation or
 - 23 noncompliance found under subsection (d); or
 - 24 (B) fifteen thousand dollars (\$15,000) for a second or
 - 25 subsequent violation or noncompliance found under
 - 26 subsection (d).
 - 27 For purposes of this subdivision, each day that a violation or
 - 28 noncompliance occurs is a separate violation or
 - 29 noncompliance.
 - 30 (2) Orders a utility to cease and desist from a violation or
 - 31 noncompliance found under subsection (d).
 - 32 (3) Mandates corrective action by a utility to alleviate a
 - 33 violation or noncompliance found under subsection (d).
 - 34 (4) Revokes or modifies the terms of a utility's:
 - 35 (A) certificate of territorial authority;
 - 36 (B) certificate of public convenience and necessity; or
 - 37 (C) other permit issued by the commission.
- 38 (f) The commission shall consider the following when
- 39 determining the amount of a civil penalty:
 - 40 (1) The size of the utility.
 - 41 (2) The gravity of the violation or noncompliance found under
 - 42 subsection (d).
 - 43 (3) The good faith of the utility in remedying the violation or
 - 44 achieving compliance after receiving notice of a violation or
 - 45 noncompliance under subsection (d).
- 46 (g) This section does not apply to a violation or noncompliance
- 47 found under subsection (d) that was the result of the following:
 - 48 (1) Customer provided equipment.

1 (2) The negligent act of a customer.

2 (3) An emergency situation.

3 (4) An unavoidable casualty.

4 (5) An act of God.

5 (h) The attorney general shall bring an action to enforce an
6 order of the commission under subsection (e). If the attorney
7 general prevails in an action under this subsection, the attorney
8 general may recover reasonable attorney's fees and court costs.

9 (i) Civil penalties under this section are cumulative. A suit for
10 recovery of a civil penalty does not affect:

11 (1) the recovery of another civil penalty or forfeiture for a
12 separate violation or noncompliance; or

13 (2) a criminal prosecution against:

14 (A) a public utility;

15 (B) an agent, a director, an employee, or an officer of a
16 public utility; or

17 (C) any other person.

18 (j) The secretary of the commission shall direct that a civil
19 penalty collected under this section be distributed as follows:

20 (1) A penalty assessed for a violation that directly affects
21 ratepayers must be refunded directly to the customers of the
22 violating utility in the form of a credit on customer bills.

23 (2) A penalty assessed for a violation that directly harms
24 another utility must be awarded directly to the other utility.

25 (3) A penalty assessed for a violation that does not directly
26 affect ratepayers or harm another utility must be deposited
27 into the account.

28 (k) The commission shall use penalties deposited into the
29 account for:

30 (1) consumer education;

31 (2) promotion of utility competition; or

32 (3) any other purpose considered by the commission to
33 further the public interest.

34 The commission shall report to the regulatory flexibility committee
35 the distribution of deposits under this section.

36 (l) Penalties deposited into the account may not be included in:

37 (1) the calculation of the difference between actual
38 expenditures and appropriations described in IC 8-1-6-1(b);

39 or

40 (2) any public utility fee credit."

41 Page 1, line 3, delete "This section does not apply to any of" and
42 insert "(a) As used in this section, "utility" means:

43 (1) a public utility over which the commission has
44 jurisdiction; or

45 (2) the department of public utilities created under
46 IC 8-1-11.1.

47 (b) If the commission:

48 (1) determines that the provision of utility service is necessary

1 to:

2 (A) prevent injury to a person; or

3 (B) alleviate an emergency; and

4 (2) directs a utility to provide utility service;

5 the utility shall provide utility service within twenty-four (24)
6 hours after receiving direction from the commission.

7 SECTION 5. IC 8-1-2-129 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2002]: **Sec. 129. The commission may require a public utility to
10 post a reasonable performance bond as a condition of the public
11 utility's operation in Indiana. The amount of the reasonable
12 performance bond may not exceed two million dollars (\$2,000,000).**

13 SECTION 6. IC 8-1-6-2 IS AMENDED TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2002]: Sec. 2. (a) All fees herein prescribed
15 shall be paid into the treasury of the state of Indiana through the
16 secretary of the commission and quietused into an account to be known
17 as the commission public utility fund account. This account shall be
18 used for enforcing the provisions of IC 8-1-1 and IC 8-1-2 and shall be
19 utilized only for the purpose of funding the expenses of the commission
20 and the consumer counselor in amounts not in excess of their
21 respective appropriations by the general assembly, plus the contingency
22 fund. All appropriations under this chapter paid out of the commission
23 public utility fund account shall be subject to the prior approval of the
24 general assembly, the governor, and the state budget agency.

25 (b) **The secretary of the commission shall deposit into the
26 account the following:**

27 (1) Fees collected from municipalities under IC 8-1-2-85. ~~shall~~
28 ~~also be deposited in the commission public utility fund account,~~
29 ~~as if they were fees collected from public utilities under this~~
30 ~~chapter.~~

31 (2) **Civil penalties collected under IC 8-1-2-115.5.**

32 SECTION 7. IC 8-1-8.4 IS ADDED TO THE INDIANA CODE AS
33 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
34 PASSAGE]:

35 Chapter 8.4. Merchant Power Plants

36 **Sec. 1. This chapter does not apply to a merchant power plant
37 that has filed a petition with the commission under IC 8-1-2.5
38 before March 1, 2001, seeking an order that the commission
39 decline to exercise, in whole or in part, its jurisdiction over the
40 merchant power plant.**

41 **Sec. 2. (a) As used in this chapter, "merchant power plant"**
42 **means a facility within Indiana used for the:**

43 (1) production, transmission, delivery, or furnishing of heat,
44 light, or power; and

45 (2) sale of electric energy exclusively on the wholesale market;
46 to other public utilities, energy service providers, or power
47 marketers within or outside Indiana.

(b) The term includes a facility that has made a significant alteration to the labor used to construct or remodel the facility. For purposes of this subsection, a facility makes a significant alteration in the labor used to construct or remodel a facility if the person uses contractors, subcontractors, or work crews that include workers who are not participants in or have not completed a jointly administered labor and management apprenticeship program approved by the United States Department of Labor's Bureau of Apprenticeship Training.

(c) The term does not include a facility that is owned, controlled, or operated by a person that is obligated contractually to provide substantially all of the wholesale power requirements of an electricity supplier under a contract extending at least five (5) years.

Sec. 3. Except as provided in section 1 of this chapter, a merchant power plant is subject to the jurisdiction of the commission.

Sec. 4. (a) The commission shall consider the following when acting upon any petition by a merchant power plant under IC 8-1-2.5 or IC 8-1-8.5:

- (1) Location.
- (2) Need.
- (3) Financing.
- (4) Reporting requirements.
- (5) Impact on electric, water, and natural gas suppliers and customers.
- (6) The recommendation of the department of natural resources under section 12 of this chapter.

(b) The commission shall issue a decision either approving or denying a merchant power plant's petition under IC 8-1-2.5 or IC 8-1-8.5 not later than eighteen (18) months after the date of the petition.

Sec. 5. (a) When petitioning the commission under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant must establish proof of financial responsibility by filing one (1) or a combination of the following with the commission:

- (1) A fully funded trust fund agreement.
- (2) A surety bond with a standby trust fund agreement.
- (3) A letter of credit with a standby trust fund agreement.
- (4) An insurance policy with a standby trust fund agreement.
- (5) Proof that the merchant power plant meets a financial test established by the commission and equivalent to one (1) of the items in subdivisions (1) through (4).

(b) The amount of financial responsibility that a merchant power plant must establish under this section shall be determined by the commission. In all cases, the amount must be sufficient to close the merchant power plant in a manner that:

- (1) minimizes the need for further maintenance and

remediation; and

(2) provides reasonable, foreseeable, and necessary maintenance and remediation after closure for at least twenty (20) years after the merchant power plant ceases operations.

(c) The commission may use:

(1) a trust fund agreement;

(2) a surety bond;

(3) a letter of credit;

(4) an insurance policy; or

(5) other proof of financial responsibility;

filed under this section for the closure or post-closure monitoring, maintenance, or remediation of a merchant power plant approved by the commission, if the merchant power plant does not comply with closure or post-closure standards established by the commission under subsection (d).

(d) The commission shall adopt rules under IC 4-22-2 to establish the following:

(1) Standards for the proper closure and post-closure monitoring, maintenance, and remediation of merchant power plants.

(2) Criteria for how money in a trust fund agreement, a surety bond, a letter of credit, an insurance policy, or other proof of financial responsibility provided by a merchant power plant may be released to the merchant power plant when the merchant power plant meets the closure and post-closure standards established under subdivision (1).

Sec. 6. (a) Not later than seven (7) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall:

(1) send notice of the petition by United States mail to all record owners of real property located within one-half (1/2) mile of the proposed facility; and

(2) cause notice of the petition to be published in a newspaper of general circulation in each county in which the facility or proposed facility is or will be located.

(b) The notice of the petition shall include:

(1) a description of the facility or proposed facility; and

(2) the location, date, and time of the field hearing required by section 7 of this chapter.

Sec. 7. Not later than thirty (30) days after filing a petition under IC 8-1-2.5 or IC 8-1-8.5, a merchant power plant shall conduct a field hearing at a location in a county in which the facility or proposed facility is or will be located. The purpose of the field hearing is to determine local support for the merchant power plant.

Sec. 8. Not later than thirty (30) days after the field hearing required by section 7 of this chapter, a majority of the persons described in section 6(a)(1) of this chapter may request in writing a hearing before the commission.

1 **Sec. 9. (a)** Not later than thirty (30) days after a hearing is
 2 requested under section 8 of this chapter, the commission shall
 3 conduct a hearing at a location in a county in which the facility or
 4 proposed facility is or will be located. The hearing required by this
 5 subsection must be held:

6 (1) before or at the same time as the hearing required under
 7 IC 8-1-8.5-5(b); and

8 (2) before the commission issues a certificate of public
 9 convenience and necessity under IC 8-1-8.5.

10 **(b)** At least ten (10) days before the scheduled hearing, notice of
 11 the hearing must be served by first class mail on:

12 (1) all record owners of property located within one-half (1/2)
 13 mile of the proposed facility; and

14 (2) the merchant power plant.

15 **(c)** The parties to the hearing include:

16 (1) a person entitled to notice under subsection (b)(1); and

17 (2) the merchant power plant.

18 **(d)** The commission shall accept written or oral testimony from
 19 any person who appears at the public hearing, but the right to call
 20 and examine witnesses is reserved for the parties to the hearing.

21 **(e)** The commission shall make a record of the hearing and all
 22 testimony received. The commission shall make the record available
 23 for public inspection.

24 **Sec. 10.** Not later than forty-five (45) days after a hearing is
 25 conducted under section 9 of this chapter, the commission shall issue
 26 written findings based on the testimony presented at the hearing. To
 27 the extent the commission's findings differ from testimony presented
 28 at the hearing, the commission must explain its findings.

29 **Sec. 11.** When considering whether to approve a merchant power
 30 plant, the commission shall give preference to the following
 31 locations for siting:

32 (1) Brownfield sites that are isolated from populated areas.

33 (2) Sites of existing or former utilities that can be replaced or
 34 repowered.

35 (3) Other sites identified for power plant or heavy industrial
 36 development in local land use plans before the initiation of site
 37 selection for the facility.

38 **Sec. 12. (a)** For purposes of this section:

39 (1) "department" refers to the department of natural
 40 resources; and

41 (2) "water resource" has the meaning set forth in IC 14-25-7-8.

42 **(b)** When considering whether to approve a merchant power
 43 plant, the commission shall obtain a recommendation from the
 44 department regarding the merchant power plant's planned use of
 45 and its potential effect on the water resource.

46 **(c)** To make its recommendation, the department may do the
 47 following:

48 (1) Rely on the merchant power plant's water resource

assessment under subsection (d).

(2) Consult with and advise users of the water resource.

(3) Enter upon any land or water in Indiana to evaluate the effect of the merchant power plant on the water resource.

(4) Conduct studies to evaluate the availability and most practical method of withdrawal, development, conservation, and use of the water resource.

(5) Require metering or other reasonable measuring of water withdrawals and reporting of the measurement to the department.

(6) Engage in any other activity necessary to carry out the purposes of this section.

(d) A merchant power plant shall provide an assessment of its effect on the water resource and its users to the commission and the department. The assessment shall be prepared by a licensed professional geologist (as defined in IC 25-17.6-1-6.5) or an engineer licensed under IC 25-31-1. The assessment must include the following information:

(1) Sources of water supply.

(2) Total amount of water to be used by the merchant power plant for each source.

(3) Location of wells or points of withdrawal.

(4) Ability of the water resource to meet the needs of the merchant power plant and other users.

(5) Probable effects of the merchant power plant's use and consumption of the water resource on other users.

(6) Alternative sources of water supply.

(7) Conservation measures proposed by the merchant power plant for reducing the plant's effect on the water resource.

(8) Other information required by any other law, rule, or regulation.

Sec. 13. Following the approval of a petition by the commission, the merchant power plant shall:

(1) notify the commission upon becoming an affiliate of any regulated Indiana utility selling electricity at retail to Indiana consumers, at which time the commission may reassert any jurisdiction it had declined under IC 8-1-2.5;

(2) obtain prior commission approval with respect to the sale of any electricity to any affiliated regulated Indiana retail utility, or any affiliate of a regulated Indiana retail utility; and

(3) obtain prior commission approval of any transfers of ownership of the facility or its assets.

SECTION 8. IC 8-1-2-115 IS REPEALED [EFFECTIVE JULY 1, 2002]."

Page 1, delete lines 4 through 17.

Delete, pages 2 through 6.

Page 7, delete lines 1 through 14.

Renumber all SECTIONS consecutively.

(Reference is to EHB 1116 as printed February 20, 2002.)

Senator MRVAN